

REFERENCE TITLE: eminent domain; fees; costs; interest

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2062

Introduced by
Representatives Gray C, Burges, Pearce

AN ACT

AMENDING SECTIONS 12-1116, 12-1128 AND 12-1130, ARIZONA REVISED STATUTES;
RELATING TO EMINENT DOMAIN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-1116, Arizona Revised Statutes, is amended to
3 read:

4 12-1116. Actions for condemnation; immediate possession; money
5 deposit

6 A. All actions for condemnation shall be brought as other civil
7 actions in the superior court in the county in which the property is located
8 except that, at least twenty days before filing an action for condemnation of
9 property or any interest in property, the plaintiff shall deliver to the
10 property owner of record and as a courtesy to the sole lessee of record, if
11 applicable, according to the records of the county recorder in the county in
12 which the property is located:

13 1. A written offer to purchase the property or interest in the
14 property and to pay FAIR AND just compensation for the property or interest
15 in the property and for any compensable damages to any remaining property.
16 The offer must constitute the plaintiff's estimate of FAIR AND just
17 compensation. The offer may be made subject to any lessees of record or any
18 lessees who may claim a compensable interest. The offer does not impose an
19 obligation on the plaintiff to provide a written offer to purchase the
20 lessee's interest.

21 2. One or more appraisals that support the amount of the proposed
22 compensation.

23 3. FULL DISCLOSURE IN WRITING REGARDING THE FINAL PROJECT, INCLUDING
24 IDENTIFICATION OF ALL ASPECTS OF WORK THAT MUST BE PERFORMED TO COMPLETE THE
25 PROJECT.

26 B. Except for special taxing districts formed pursuant to title 48,
27 chapter 17, if no lease is recorded or if more than one lease is recorded for
28 the property with the county recorder of the county in which the property is
29 located, at least twenty days before filing an action for condemnation of
30 property or any interest in property, the plaintiff shall provide notice of
31 the offer and appraisal to the party having a plain and obvious commercial
32 ownership or operational interest in substantial improvements on the property
33 by posting the notice in plain sight at the property that may be subject to
34 condemnation.

35 C. For special taxing districts formed pursuant to title 48, chapter
36 17, if more than one lease is recorded for the property with the county
37 recorder of the county in which the property is located, at least twenty days
38 before filing an action for condemnation of property or any interest in
39 property, the plaintiff shall provide notice of the offer and appraisal by
40 delivering to all property interest holders of record the notice that an
41 offer has been made and an appraisal has been conducted. The notice does not
42 apply to lessees of record if the lease or other written agreement governing
43 the interest holder's rights in the property provides that the property
44 interest holder would not be entitled to condemnation proceeds.

1 D. If a lessee that is not noted in the record of the county recorder
2 and has a commercial ownership or operational interest in substantial
3 improvements on the property requests a copy of the offer and appraisal, the
4 plaintiff shall promptly comply with the request on presentation of
5 documentation by the lessee of the lessee's interest in the property.

6 E. At the time of filing the complaint, or at any time after filing
7 the complaint, the plaintiff may apply to the court for an order permitting
8 the plaintiff to take possession of and use the property sought to be
9 condemned for the purpose prayed for.

10 F. The superior court may waive the requirements of subsection A, B, C
11 or D of this section if the court determines that the plaintiff will suffer
12 immediate and irreparable harm that outweighs the property owner's or
13 lessee's interest.

14 G. On filing the application, the court shall set a time for a
15 hearing. Notice shall be served on the parties in interest by personal
16 service within the state, or by publication if without the state, in any
17 manner as the court directs.

18 H. On the day of the hearing, if it appears that the use for which the
19 property is sought to be condemned is a necessary use, the court shall
20 receive evidence as to the probable damages to each owner, possessor or
21 person having an interest in each parcel of land sought to be condemned and
22 of any unpaid property taxes that have been levied, including penalties and
23 interest, on the property sought to be condemned and may direct that on a
24 deposit of money, on direct payment to each owner, possessor or person having
25 an interest in each parcel, or if the condemnor is the state or a county,
26 city, town or political subdivision of this state, on posting a bond in a
27 form to be approved by the court, the plaintiff shall be let into the
28 possession and full use of the parcels of land, as described in the order,
29 for the purposes specified in the order.

30 I. The plaintiff may deposit the money or bond with the clerk of the
31 court or the state treasurer. The money or bond may be held for the use and
32 benefit of each person having an interest in each parcel of land sought to be
33 condemned, subject to final judgment after trial of the action, and may be
34 held also as a fund to pay any further damages and costs recovered in the
35 proceedings and any unpaid property taxes that were levied as of the date of
36 the order for immediate possession, including penalties and interest, on the
37 property sought to be condemned, as well as all damages sustained by the
38 defendant if for any cause the property is not finally taken for public
39 use. The deposit of the money or bond shall not discharge the plaintiff from
40 liability to maintain the fund in full, but it shall remain deposited for all
41 accidents, defalcations or other contingencies, as between the parties to the
42 proceedings, at the risk of the plaintiff, until the compensation or damage
43 is finally settled by judicial determination, and the court awards such part
44 of the money or bond as shall be determined to the defendant, or until the
45 clerk or the state treasurer is ordered by the court to disburse it. The

1 clerk of the court or the state treasurer is liable to the plaintiff for the
2 deposit or bond if it is lost or abstracted.

3 J. If the plaintiff elects to deposit the money or bond in the state
4 treasury, the state treasurer shall receive the money or bond and return a
5 receipt for the money or bond to the court, and the state treasurer shall
6 safely keep the deposit in a special fund to be entered on the state
7 treasurer's books as the condemnation fund. The state treasurer shall invest
8 and divest monies in the condemnation fund as provided by section 35-313, and
9 monies earned from investment shall be credited to the fund. The state
10 treasurer shall disburse the money deposited and, if necessary, convert the
11 investments to cash for the purpose of making the disbursements or forfeit
12 the bond as the court may direct pursuant to its judgment. After
13 satisfaction of the judgment in a condemnation action and payment of any
14 unpaid property taxes that were levied as of the date of the order for
15 immediate possession, including penalties and interest, on the property
16 sought to be condemned, the excess, if any, of the deposit made regarding the
17 action, including monies earned by the investment and reinvestment of the
18 deposit, shall be returned by the state treasurer to the plaintiff by a
19 warrant that the department of administration shall issue upon direction of
20 the state treasurer after having received a certified copy of the judgment
21 and without regard to provisions requiring the filing of a claim against the
22 state. Any monies remaining in the condemnation fund at the end of the
23 fiscal year do not revert to the state general fund.

24 K. If the plaintiff elects to deposit the money or bond with the clerk
25 of the court, the clerk shall receive the money or bond and return a receipt
26 for the money or bond to the court, and the clerk is liable to the plaintiff
27 if the money or bond is lost or abstracted. The clerk shall disburse the
28 money or forfeit the bond as the court may direct pursuant to its
29 judgment. Any money remaining in a deposit after the judgment of the court
30 and all unpaid property taxes that were levied as of the date of the order
31 for immediate possession, including penalties and interest, have been fully
32 paid shall be returned by the clerk to the plaintiff.

33 L. On application by any party, the court may order that money
34 deposited with the clerk of the court or the state treasurer be paid to any
35 owner, possessor or person having an interest in any parcel.

36 M. Subject to court approval, the parties may also stipulate any of
37 the following with any owner, occupant or possessor of any parcel:

38 1. To the amount of money that the plaintiff may deposit with the
39 clerk of the court or with the state treasurer for any owner, occupant or
40 possessor of any parcel.

41 2. To the amount of direct payment to any owner, occupant or possessor
42 of any parcel.

43 3. To the payment of money deposited with the clerk of the court or
44 the state treasurer to any owner, occupant or possessor of any parcel.

1 4. For the release of any bond on payment to any owner, occupant or
2 possessor of any parcel.

3 N. A person in interest for whom a deposit has been made pursuant to
4 stipulation for the person's withdrawal is entitled to interest on the amount
5 that the person is allowed to withdraw from the date the order for immediate
6 possession is signed by the court pursuant to subsection C of this section
7 until the date of withdrawal. This person is also entitled to interest on
8 that portion of the final judgment, exclusive of costs allowed by the court,
9 that exceeds the amount that is deposited for the person's withdrawal from
10 the date the order for immediate possession is signed by the court until the
11 judgment is paid. If the amount that is withdrawn by any defendant exceeds
12 the amount of the final judgment awarded the defendant inclusive of costs
13 allowed by the court and any unpaid property taxes that were levied as of the
14 date of the order for immediate possession, including penalties and interest,
15 on the property sought to be condemned, the defendant withdrawing the funds
16 immediately shall repay to the plaintiff the excess, with legal interest from
17 the date of withdrawal to the date of repayment, except that the amount that
18 is necessary to pay any unpaid property taxes that were levied as of the date
19 of the order for immediate possession, including penalties and interest, on
20 the property shall be paid to the county treasurer of the county in which the
21 property sought to be condemned is located.

22 O. Any stipulation that is made or any evidence that is introduced
23 pursuant to this section shall not be introduced in evidence or used to the
24 prejudice of any party in interest on the trial of the action.

25 Sec. 2. Section 12-1128, Arizona Revised Statutes, is amended to read:

26 12-1128. Costs; attorney fees; interest; jury fees

27 A. THE COURT MAY AWARD REASONABLE costs ~~may be allowed or not,~~ and
28 ATTORNEY FEES. If allowed, THE COURT may ~~be apportioned~~ APPORTION THE FEES
29 AND COSTS between the parties on the same or adverse sides, ~~in the discretion~~
30 ~~of the court.~~ THE COURT MAY AWARD THE PAYMENT OF INTEREST TO THE DEFENDANT
31 AT A RATE THAT IS EQUAL TO THREE PERCENTAGE POINTS ABOVE THE FEDERAL
32 POSTJUDGMENT INTEREST RATE IN EFFECT ON THE DATE JUDGMENT IS ENTERED.

33 B. The jury fee may be assessed or not against the plaintiff, in the
34 discretion of the court. If jury fees are so assessed, they shall be
35 calculated in the same manner and amounts as in other civil actions and the
36 plaintiff shall pay such fee to the clerk of the court for transmittal to the
37 county treasurer who shall dispose OF such monies in the same manner as the
38 disposition of other jury fees.

39 C. In an action for condemnation of property by or on behalf of an
40 educational, reformatory or penal institution of the state, if the board or
41 officers having charge of the institution, ~~prior to~~ BEFORE commencement of
42 the action or proceeding, tender to the owner of the property such sum of
43 money as the board or officers deem the reasonable value of the property, and
44 the owner refuses to accept it and transfer the property, ~~then~~ all costs and
45 expenses of the action or proceeding shall be taxed against the owner unless

1 the sum of money assessed in the judgment as the value of the property and
2 compensation to be paid therefor is greater than the amount so tendered.

3 Sec. 3. Section 12-1130, Arizona Revised Statutes, is amended to read:

4 12-1130. Fees and expenses: appraisal: relocation benefits:
5 applicability

6 A. In a proposed condemnation action if an ~~owner-occupant of a~~
7 ~~residential property~~ OWNER OF THE REAL PROPERTY disagrees with the offer and
8 appraisal, the ~~owner-occupant~~ OWNER may obtain a second appraisal from an
9 appraiser who is on the approved list that is maintained by the governmental
10 entity and the governmental entity shall pay for the second appraisal.

11 B. Before filing an eminent domain action, the governmental entity
12 shall provide to the ~~owner-occupant~~ OWNER all appraisals of the property that
13 the governmental entity obtains.

14 C. ~~Any~~ IF A governmental entity ~~that~~ acquires owner-occupied
15 residential property by condemnation or threat of condemnation, THE
16 GOVERNMENTAL ENTITY shall provide the owner-occupant with a determination of
17 relocation benefits in an amount that allows the owner-occupant to purchase a
18 comparable replacement dwelling as provided under applicable relocation law.

19 D. In a condemnation action to acquire ~~owner-occupied residential~~ REAL
20 property, the court may award fees and other expenses to any party other than
21 this state or a city, town or county or any other political subdivision of
22 this state. In making the determination, the court may consider the amount
23 of the difference between the final offer and the compensation awarded, the
24 percentage of the difference between the final offer and the award and any
25 other factors the court deems appropriate. For the purposes of this
26 subsection, "fees and other expenses" means the reasonable expenses of expert
27 witnesses, the reasonable cost of any study, analysis, engineering report,
28 test or project that the court finds to be directly related to and necessary
29 for the presentation of the party's case and reasonable and necessary
30 attorney fees.

31 E. This section does not apply to actions for acquisition of property
32 for public safety, ~~transportation~~, flood control or utility purposes.